

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RODNEY E. AKINS,)	Civil No. 12-CV-0576-BTM (WVG)
)	
Plaintiff,)	
)	
v.)	ORDER DENYING PLAINTIFF'S
)	<i>EX PARTE</i> MOTION TO EXTEND
SAN DIEGO COMMUNITY)	TIME TO SUPPLEMENT AND
COLLEGE DISTRICT, <i>et al.</i> ,)	CORRECT DISCLOSURES
)	
Defendants.)	(Fed. R. Civ. P. 16)
)	(Local Rule 16.1)
)	(Fed. R. Civ. P. 26)

Plaintiff's *Ex Parte* Motion to Extend Time to Supplement and Correct Disclosures (Doc. No. 91) to extend the fact discovery deadline by ninety days came before the Court for resolution. For the reasons set forth below the Motion is DENIED without prejudice.

1. Background

The Court convened a Case Management Conference on June 4, 2015 and provided the parties with case dates, including the fact discovery cut off date. (*See* Doc. No. 79.) On June 8, 2015, the Court issued the Case Management Conference Order Regulating Discovery and Other Pretrial Proceedings, which specifies that the fact discovery cut off deadline is December 4, 2015. (Doc. No. 80.) On November 13,

1 Plaintiff filed an *Ex Parte* Motion to Extend Time to Supplement and Correct
 2 Disclosures to extend the fact discovery deadline from December 4, 2015 by ninety
 3 days. (Doc. No. 91.) In support, Plaintiff argues, with scant evidence, that he has been
 4 unable to conduct discovery from July to October due to medical treatment in Arizona.
 5 Defendant opposes Plaintiff's Motion stating that Plaintiff was "responsive during his
 6 absence." (Doc. No. 93.) The Court accordingly DENIES Plaintiff's Motion without
 7 prejudice.

8 2. Analysis and Ruling

9 Rule 16(b)(4) provides that the Court's scheduling order "may be modified
 10 upon a showing of 'good cause,' an inquiry that focuses on the reasonable diligence
 11 of the moving party." Noyes v. Kelly Servs., 488 F.3d 1163, 1174 n. 6 (9th Cir.2007);
 12 citing Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.1992). In
 13 Johnson, the Ninth Circuit explained,

14 ... Rule 16(b)'s "good cause" standard primarily concerns the diligence
 15 of the party seeking the amendment. The district court may modify the
 16 pretrial schedule "if it cannot reasonably be met despite the diligence of
 17 the party seeking the extension." Fed .R.Civ.P. 16 advisory committee's
 notes (1983 amendment) ... [T]he focus of the inquiry is upon the moving
 party's reasons for seeking modification.... If that party was not diligent,
 the inquiry should end.
Johnson, 975 F.2d at 609.

18 In part, the "good cause" standard requires the parties to demonstrate that "noncompli-
 19 ance with a Rule 16 deadline occurred or will occur, notwithstanding ... diligent efforts
 20 to comply, because of the development of matters which could not have been
 21 reasonably foreseen or anticipated at the time of the Rule 16 Scheduling Conference
 22 ..." Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D.Cal.1999).

23 The facts and supporting evidence provided in the instant Motion do not
 24 constitute good cause. Although Plaintiff contends that he was in Arizona from July
 25 to October undergoing medical treatment, he has provided no supporting evidence of
 26 his unavailability during this time. At best, he points to a Phoenix, Arizona, postmark
 27 dated August 18, 2015 as proof he was unavailable. However, all this demonstrates
 28 is that the particular letter was sent from Arizona on a specific day. Despite Plaintiff's

1 statement that he “can provide additional evidence,” he fails to attach any supporting
2 documents to his Motion presently before the Court. Without further documentation
3 demonstrating an extended absence for medical reasons, the Court cannot find that
4 Plaintiff was in Arizona undergoing medical treatment for the entire period of July to
5 October, or even if he was, that Plaintiff’s medical condition and/or treatment he
6 received rendered him incapable of carrying out his discovery obligations.

7 Plaintiff presents no information as to why his short term absence prevented
8 him from participating in discovery. Common discovery practice is often conducted
9 by parties located in various states. Mere presence in another state is not sufficient
10 justification to suspend a plaintiff’s obligation to diligently pursue his claims. Without
11 any evidence or information regarding Plaintiff’s inability to conduct discovery during
12 this time, the Court cannot find good cause for an extension of discovery deadlines.

13 Lastly, the Court questions Plaintiff’s diligence. While proper procedural
14 mechanisms to conduct discovery are articulated in the Federal Rules of Civil
15 Procedure, it does not appear Plaintiff has utilized these methods available to him even
16 before or after his stay in Arizona. Although the Court convened a Case Management
17 Conference on June 4, 2015, Plaintiff appears to have conducted no discovery in the
18 month of June before his departure to Arizona in July. Similarly, although Plaintiff
19 was only in Arizona until October, Defense counsel states that he has received no
20 discovery from Plaintiff during the month of November either. It does not appear that
21 Plaintiff has complied with basic discovery procedures or served proper discovery
22 requests to date.

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